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9
10 **BEFORE THE**
RESPIRATORY CARE BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Statement of Issues Against:

Case No. S-380

13 TRACEY SUE FORRESTER
7036 Victoria Avenue Apt. # G
14 Highland, California 92346

STATEMENT OF ISSUES

15 Respondent.
16

17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Respiratory Care Board of California
21 (Board), Department of Consumer Affairs.

22 2. On or about August 14, 2006, the Board received an application for a
23 Respiratory Care Practitioner License from Tracey Sue Forrester (Respondent). On or about
24 August 7, 2006, Respondent certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 December 11, 2006.

27 JURISDICTION

28 3. This Statement of Issues is brought before the Board under the authority of

1 the following laws. All section references are to the Business and Professions Code (Code),
2 unless otherwise indicated.

3 4. Section 3710 of the Code states: "The Respiratory Care Board of
4 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
5 8.3, the Respiratory Care Practice Act]."

6 5. Section 3718 of the Code states: "The board shall issue, deny, suspend,
7 and revoke licenses to practice respiratory care as provided in this chapter."

8 6. Section 3732, subdivision (b) of the Code states:

9 "The board may deny an application, or may order the issuance of a license
10 with terms and conditions, for any of the causes specified in this chapter for
11 suspension or revocation of a license, including, but not limited to, those causes
12 specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

13 7. Section 3750 of the Code states:

14 "The board may order the denial, suspension or revocation of, or the
15 imposition of probationary conditions upon, a license issued under this chapter, for
16 any of the following causes:

17 "...

18 "(d) Conviction of a crime that substantially relates to the qualifications,
19 functions, or duties of a respiratory care practitioner. The record of conviction or a
20 certified copy thereof shall be conclusive evidence of the conviction.

21 "..."

22 8. Section 3750.5 of the Code states:

23 "In addition to any other grounds specified in this chapter, the board may
24 deny, suspend, or revoke the license of any applicant or license holder who has
25 done any of the following:

26 "(a) Obtained or possessed in violation of law, or except as directed by a
27 licensed physician and surgeon, dentist, or podiatrist administered to himself or
28 herself, or furnished or administered to another, any controlled substances as

1 defined in Division 10 (commencing with Section 11000) of the Health and Safety
2 Code. . . .”

3 "(b) Used any controlled substance as defined in Division 10 (commencing
4 with Section 11000) of the Health and Safety Code.

5 “”

6 9. Section 3752 of the Code states:

7 “A plea or verdict of guilty or a conviction following a plea of nolo
8 contendere made to a charge of any offense which substantially relates to the
9 qualifications, functions, or duties of a respiratory care practitioner is deemed to be
10 a conviction within the meaning of this article. The board shall order the license
11 suspended or revoked, or may decline to issue a license, when the time for appeal
12 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
13 order granting probation is made suspending the imposition of sentence,
14 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
15 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
16 setting aside the verdict of guilty, or dismissing the accusation, information, or
17 indictment.”

18 10. Section 492 of the Code states:

19 “Notwithstanding any other provision of law, successful completion of any
20 diversion program under the Penal Code, or successful completion of an alcohol
21 and drug problem assessment program under Article 5 (commencing with section
22 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any
23 agency established under Division 2 ([Healing Arts] commencing with Section
24 500) of this code, or any initiative act referred to in that division, from taking
25 disciplinary action against a licensee or from denying a license for professional
26 misconduct, notwithstanding that evidence of that misconduct may be recorded in a
27 record pertaining to an arrest.”
28

1 COST RECOVERY

2 11. Section 3753.5, subdivision (a) of the Code states:

3 "In any order issued in resolution of a disciplinary proceeding before the
4 board, the board or the administrative law judge may direct any practitioner or
5 applicant found to have committed a violation or violations of law to pay to the
6 board a sum not to exceed the costs of the investigation and prosecution of the
7 case."

8 12. Section 3753.7 of the Code states:

9 "For purposes of the Respiratory Care Practice Act, costs of prosecution
10 shall include attorney general or other prosecuting attorney fees, expert witness
11 fees, and other administrative, filing, and service fees."

12 13. Section 3753.1, subdivision (a) of the Code states:

13 "An administrative disciplinary decision imposing terms of probation may
14 include, among other things, a requirement that the licensee-probationer pay the
15 monetary costs associated with monitoring the probation."

16 CONTROLLED SUBSTANCE

17 14. Methamphetamine is a Schedule II controlled substance pursuant to
18 Health and Safety Code section 11055.

19 FIRST CAUSE FOR DENIAL OF APPLICATION

20 (Conviction of a Crime)

21 15. Respondent's application is subject to denial under Business and
22 Professions Code sections 3750, subdivision (d), and 3752, in conjunction with section
23 3732, subdivision (b), in that Respondent was convicted of a crime substantially related to
24 the qualifications, functions and duties of a respiratory care practitioner. The
25 circumstances are as follows:

26 July 10, 1996 Conviction in Case No. 319343

27 A. On or about January 23, 1995, Riverside police officers responded
28 to a report regarding possible illegal check cashing activity at a bank. The officers

1 spoke to a male suspect who stated that two females had given him a ride to the
2 bank and they were waiting for him in a parked vehicle. The officers located the
3 vehicle and saw Respondent sitting in the driver's seat. One of the officers then
4 saw Respondent drop an object resembling a glass smoking pipe on the driver's
5 side floorboard of the vehicle. Upon inspection of the glass smoking pipe, the
6 officer found a melted substance resembling methamphetamine. The officer
7 noticed that Respondent displayed objective symptoms of being under the
8 influence of a controlled substance. A background check revealed that she had an
9 outstanding bench warrant. Respondent was placed under arrest. She admitted to
10 the officer that the pipe and the methamphetamine belonged to her. She stated that
11 she had melted some methamphetamine in the pipe and then she smoked it.

12 B. On or about January 25, 1995, in Riverside County Superior Court
13 Complaint No. 319343, Respondent was charged with possession of the controlled
14 substance methamphetamine, in violation of Health and Safety Code section
15 11377(a), a misdemeanor (Count 1), use/under the influence of a controlled
16 substance, in violation of Health and Safety Code section 11550(a), a misdemeanor
17 (Count 2), and possession of drug paraphernalia, in violation of Health and Safety
18 Code section 11364, a misdemeanor (Count 3).

19 C. On or about February 24, 1995, criminal proceedings were
20 adjourned, and Respondent was granted diversion by the court on Counts 1, 2 and
21 3 for twelve months pursuant to Penal Code section 1000.2.

22 D. On or about May 2, 1996, Respondent failed to appear for a
23 diversion progress hearing, diversion proceedings were terminated, and criminal
24 proceedings were reinstated. On or about June 26, 1996, the court ordered
25 diversion reinstated on Counts 1, 2, and 3 on the same terms and conditions as
26 previously ordered. Respondent was ordered to complete a drug court program.

27 E. On or about July 10, 1996, Respondent failed to comply with the
28 drug court program and criminal proceedings were reinstated. Respondent was

1 convicted pursuant to a plea of guilty to possession of the controlled substance
2 methamphetamine (Count 1). She was placed on probation for three years with the
3 following terms and conditions, among others: serve 120 days in custody, pay a
4 restitution fine of \$100.00, and complete a drug program. The court ordered her
5 sentence to run concurrent with her sentence in Case No. CR69575. Counts 2 and
6 3 of the complaint were dismissed.

7 July 10, 1996 Conviction in Case No. CR69575

8 F. On or about July 8, 1996, Riverside Narcotics Task Force police
9 officers executed a search warrant on Respondent at her residence. Upon
10 questioning by one of the officers, Respondent stated she had methamphetamine in
11 her pants pocket. She gave the officer the methamphetamine and a glass pipe. The
12 officer noticed that she displayed objective signs of being under the influence of a
13 controlled substance, and he conducted a drug evaluation. Upon further
14 questioning, Respondent admitted that she used one line of methamphetamine that
15 day which she ingested by smoking. Respondent was placed under arrest.

16 G. On or about July 10, 1996, in Riverside County Superior Court
17 Complaint No. CR69575, Respondent was charged with possession of the
18 controlled substance methamphetamine, in violation of Health and Safety Code
19 section 11377(a), a misdemeanor (Count 3), use/under the influence of a controlled
20 substance, in violation of Health and Safety Code section 11550(a), a misdemeanor
21 (Count 4), and possession of drug paraphernalia, in violation of Health and Safety
22 Code section 11364, a misdemeanor (Count 5).

23 H. On or about July 10, 1996, Respondent was convicted pursuant to a
24 plea of guilty to possession of a controlled substance (Count 3). Proceedings were
25 suspended, and she was placed on probation for three years with the following
26 terms and conditions, among others: serve 120 days in custody, and pay a
27 restitution fine of \$100.00. The court ordered her sentence to run concurrent with
28 her sentence in Case No. 319343. Counts 4 and 5 of the complaint were dismissed.

1 I. On or about October 10, 1996, Respondent failed to appear to be
2 committed to custody, was found to be in violation of her probation, and her
3 probation was revoked. On or about March 19, 1998, Respondent's probation was
4 reinstated. The 120 days county jail condition was suspended on the condition that
5 she complete a 90-day in-patient and 90 day out-patient drug program. On or
6 about April 14, 1998, Respondent failed to appear for her probation hearing. She
7 was found to be in violation of her probation, and her probation was revoked. On
8 or about May 14, 1998 a probation violation hearing was held. Respondent
9 admitted that she violated probation, was found to be in violation of her probation.
10 She was ordered to return on August 20, 1998 for proof of enrollment in a drug
11 court program.

12 J. On or about November 22, 2000, Respondent failed to appear for a
13 probation hearing. The court ordered an additional complaint filed adding failure
14 to obey a court order, in violation of Penal Code 166.4, a misdemeanor (Count 6).
15 A bench warrant was issued for her arrest.

16 K. On or about July 1, 2005, a hearing was held in which Respondent
17 admitted that she violated her probation. She was ordered to pay her fines and
18 Count 6 of the complaint was dismissed.

19 SECOND CAUSE FOR DENIAL OF APPLICATION

20 (Use of a Controlled Substance)

21 16. Respondent's application is subject to denial under Business and
22 Professions Code section 3750.5, subdivision (b), in conjunction with section 3732,
23 subdivision (b), in that she used a controlled substance.

24 A. On or about June 27, 1994, in San Bernardino County Superior
25 Court Complaint No. M0274569, Respondent was charged with use of a controlled
26 substance, in violation of Health and Safety Code section 11550, a misdemeanor
27 (Count 1), following her arrest on May 6, 1994.

28 B. On or about January 24, 1996, Respondent was granted diversion

1 for one year pursuant to Penal Code section 1000.2. She was ordered to pay an
2 administrative fee of \$100.00, a diversion restitution fee of \$110.00, and complete
3 a drug treatment program.

4 C. On or about June 21, 1996, Respondent's diversion was revoked for
5 failure to complete a drug treatment program. On or about April 21, 1998, a
6 diversion hearing was held. Respondent admitted that she violated diversion and
7 her diversion remained revoked. Criminal proceedings were reinstated, and
8 Respondent pled of guilty to use of a controlled substance. She was placed on
9 diversion for one year and ordered to complete a drug rehabilitation program.

10 THIRD CAUSE FOR DENIAL OF APPLICATION

11 (Possession of a Controlled Substance)

12 17. Respondent's application is subject to denial under Business and
13 Professions Code section 3750.5, subdivision (a), in conjunction with section 3732,
14 subdivision (b), in that she possessed a controlled substance.

15 A. Respondent refers to and, by this reference, incorporates paragraphs
16 15 and 16, inclusive, above, as though fully set forth.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

- 1. Denying the application of Tracey Sue Forrester for a Respiratory Care Practitioner License;
- 2. Directing Tracey Sue Forrester to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and,
- 3. Taking such other and further action as deemed necessary and proper.

DATED: April 5, 2007

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant